



**UNITED STATES DEPARTMENT OF COMMERCE  
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/574,194 12/18/95 MILKS

12M2/0923

OBLON SPIVAK MCCLELLAND  
MAIER AND NEUSTADT  
FOURTH FLOOR 1755 JEFFERSON DAVIS HWY  
ARLINGTON VA 22202

R	7289-002-25
EXAMINER	

BURN, B

ART UNIT	PAPER NUMBER
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4

1209  
DATE MAILED:

09/23/96

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                 | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.                  |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474.     | 6. <input type="checkbox"/> _____  |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-40 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.

3. ☐ Claims \_\_\_\_\_ are allowed.

4. ☒ Claims 1-40 are rejected.

5. ☐ Claims \_\_\_\_\_ are objected to.

6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

**EXAMINER'S ACTION**

Art Unit: 1209

Claims 1-13 and claims 14-40 are pending in this reissue.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-11, and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Meer et al.<sup>1</sup>

Vander Meer et al. disclose the vegetable oil insoluble anionic fluorochemical surfactants of the present claims, including their insecticidal efficacy against fire ants and cockroaches. Vander Meer et al. teach that these surfactants may be inserted into formulations dissolved in a bait such as soybean oil and adsorbed onto an edible food carrier such as corn grits (p. 1196). Claims 7-11 recite application rates and surfactant:carrier ratios that are not specified by Vander Meer et al.; however, a skilled artisan would select proper rates and ratios through routine experimentation. In addition, the criticality of these specific rates and ratios has not been presented. The instant invention would have been *prima facie* obvious to one of ordinary skill in the art at the time it was made, because Vander Meer et al. provide fairly specific guidance to the ordinary practitioner in preparing an insecticidal composition comprising a vegetable oil insoluble anionic fluorochemical surfactant adsorbed onto an edible non-liquid food carrier.

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<sup>1</sup>J. Econ. Entomol. 78:1190-7 (1985)

Art Unit: 1209

3. Claims 4, 12, 13, and 27-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander Meer et al. (supra) taken together with Marks, Sr.<sup>2</sup>

Vander Meer et al. are relied upon for the reasons indicated above. Marks, Sr. is relied upon for teaching that it is known to use a volatile alcoholic solvent in preparing a pesticidal composition, whereby the composition is prepared with the solvent and the solvent is then allowed to evaporate.

The instant invention would have been *prima facie* obvious to one of ordinary skill in the art at the time it was made, because Vander Meer et al. provide fairly specific guidance to the ordinary practitioner in preparing an insecticidal composition comprising a vegetable oil insoluble anionic fluorochemical surfactant adsorbed onto an edible non-liquid food carrier. In addition, Marks, Sr. teach that it is known to use a volatile alcoholic solvent in preparing such compositions.

Accordingly, absent a showing of unobvious properties or unexpected results and a clear delineation of the present invention over the prior art of record, the claims must be refused.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian M. Burn whose telephone number is (703)308-4525. The examiner can normally be reached on Monday thru Friday from 8:00AM to 6:00PM.

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<sup>2</sup>U.S. 4,762,718

Serial Number: 08/574,194

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If attempts to reach the examiner by telephone are unsuccessful and the matter is urgent, the supervisory primary examiner, Jose Dees, can be reached on (703)308-1235. The fax phone number for this Group is (703)308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

  
Brian M. Burn  
Primary Examiner  
Group 1209